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AUG 30 1963

THE ONTARIO COMMITTEE ON TAXATION
O.C. 557/63

BRIEF

ON BEHALF OF

JOINT STOCK INSURANCE COMPANIES, GENERAL MEMBERS OF THE

CANADIAN UNDERWRITERS' ASSOCIATION

MONTREAL, AUGUST 30, 1963

A. LESLIE HAM, Q.C.
Counsel
Canadian Underwriters' Association

To: The Chairman and Members of
The Ontario Committee on Taxation.

1. This brief is filed pursuant to a suggestion contained in a letter addressed to Mr. E.C. Duff, then Manager of the Ontario Branch of the Canadian Underwriters' Association, dated June 11th, 1963, by Mr. H.R. Hanson, Secretary of the Committee, (See Exhibit "A") and the invitation to do so extended to the Association in the "Information Memorandum" of May and June 1963.

2. It is filed on behalf of the Canadian Underwriters' Association, a body corporate under Part II of the Companies Act (Canada) 1934, by Letters Patent dated April 1st, 1937 and its Members who are Joint Stock Insurers as listed in Exhibit "B" attached hereto.

3. The brief expresses no view as to the general level of taxes levied by the Province but is directed to a tax levy upon insurers as such, as distinct from corporations engaged in other fields of industry and commerce.

A. Leslie Ham, Q.C.
Counsel for the
Canadian Underwriters' Association.

August 16th, 1963.

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1. As to taxes specifically levelled against insurers as such(1)

   A. "Insurance Act - license fees & taxes $554,000".(1)

      I. Admittedly there will be many shades of opinion as to the wisdom and extent of such fees and taxes; but the fact is, that the Department of Insurance exists to supervise the insurance industry's operation in the Province, and, it is reasonable to expect that the costs of such special supervision should be borne by the industry itself.

      II. It is not the purpose of this brief however to comment on taxes and fees imposed by the Insurance Act.

   B. "Fire Marshal's Act taxes $586,000"(1)

      The comments herein set out are directed to Section 11 of this Act.

2. As to "Fire Marshal's Act" R.S.O. 1950 c.140.

   A. The "fire waste" with respect to property, as distinct from that arising from loss of life, in the Province of Ontario runs something over 45 million dollars annually(2).

   B. While such waste, in its first impact, may be borne by the individual through loss of life; or the individual or corporation through loss of property, in the last analysis, however, the cost of such waste is assumed by the community in increased cost of living and the resulting restraint on productivity and on the ability of Ontario's industry to compete in other markets.

   C. The Act indicates its purpose in its delineation of the powers of the Fire Marshal.(3)

      "3. Powers and duties of Fire Marshal - Subject to the regulations and <u>for the prevention and investigation of fire</u>, it shall be the duty of the Fire Marshal, and he shall have power,....."

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(1) Information Memorandum No. 2 June 1963 Appendix II page 7.

(2) Report of the Superintendent of Insurance for Ontario 1962 page 209.

(3) See Exhibit "C" for full text of Section 3.

2. Cont'd:

D. IT IS SUBMITTED, THE PURPOSE OF THE ACT BEING TO REDUCE THE FIRE WASTE OF THE PROVINCE, IN THE INTERESTS OF ALL CITIZENS OF THE PROVINCE, THAT THE COST OF ADMINISTRATION OF THE ACT AND THE CARRYING OUT OF ITS PURPOSES, SHOULD, IN EQUITY, BE BORNE BY THE CONSOLIDATED REVENUE OF THE PROVINCE.

3. The position of insurers and insureds in the economy.

A. Just as bankers serve the economy by borrowing money from those that have it and loaning it to those that need it: so insurers collect premiums from the many owners of property, and, with such funds indemnify the few who suffer loss.

I. Money is as susceptible to loss by theft, (as defined by the Criminal Code of Canada), as is property to loss by fire.

II. It is incongruous to suggest, as sound policy, that the cost, or part of the cost, of police protection against all specie of theft should be borne, in the first instance by banks and like institutions; and then indirectly by those who use such services, or that automobile manufacturers directly and then the purchasers of cars indirectly, should in those capacities bear the cost of police traffic control established for the benefit of driver and pedestrian alike.

III. It is to be noted that some of the duties of the Fire Marshal are analogous to those of the Police referred to above, namely; the investigation and prosecution with respect to property loss due to the crime of arson. It would never be suggested that the Police Department should bill some insurer for services rendered in the apprehending, prosecution and conviction of an arsonist.

IV. Again it would hardly be suggested as sound policy, that because hospital services tend to reduce periods of disability due to illness and to prolong life that the premiums of buyers of Life & Health Insurance should bear a tax

2. Cont'd:

D. IT IS SUBMITTED, THE PURPOSE OF THE ACT BEING TO REDUCE THE FIRE WASTE OF THE PROVINCE, IN THE INTERESTS OF ALL CITIZENS OF THE PROVINCE, THAT THE COST OF ADMINISTRATION OF THE ACT AND THE CARRYING OUT OF ITS PURPOSES, SHOULD, IN EQUITY, BE BORNE BY THE CONSOLIDATED REVENUE OF THE PROVINCE.

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II. It is incongruous to suggest, as sound policy, that the cost, or part of the cost, of police protection against all species of theft should be borne, in the first instance by banks and like institutions; and then indirectly by those who use such services, or that automobile manufacturers directly and then the purchasers of cars indirectly, should in those capacities bear the cost of police traffic control established for the benefit of driver and pedestrian alike.

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IV. Again it would hardly be suggested as sound policy, that because hospital services tend to reduce periods of disability due to illness and to prolong life that the premiums of buyers of Life & Health Insurance should bear a tax

3. A. IV. Cont'd:

for the purpose of making a specific contribution towards cost of hospital services maintained under Provincial Legislation in the interest of all citizens.

B. The burden of such tax is unfairly distributed as between citizens(4)

I. There are those with property at risk that do not insure at all and therefore make no contribution to the cost of the services that are maintained for their benefit as well as those who do insure.

II. Of those who insure only some insure to full value. Those who do insure to value thus have the greater burden to bear than their fellow citizens who are content to carry some of the risk themselves.

III. Irrespective of the amount of values insured, the burden, being based on premiums, will fluctuate with the hazards involved since fire rates fluctuate with the hazards. A homeowner, a farmer, insuring to value pays a much higher premium than a homeowner in an urban centre that maintains reasonable Fire Defence Services, and who insures for like values; i.e. the burden of tax on the farmer's premium will mean considerably more cost in dollars.

IV. IT IS THEREFORE SUBMITTED: THAT THERE IS NO SOUND BASIS FOR THE IMPOSITION OF A TAX, DIRECT OR INDIRECT, ON THE CITIZEN WHO, FROM CHOICE OR UNDER DURESS OF HIS CREDITORS, SEEKS, FOR A CONSIDERATION, TO TRANSFER A RISK FROM HIS OWN POCKET TO THAT OF ANOTHER WHO IS THE BUSINESS OF ASSUMING SUCH RISK, WHEN THE SERVICES OF THE FIRE MARSHAL AND HIS DEPARTMENT REDOUNDED TO THE BENEFIT OF ALL CITIZENS, WHETHER THEY BEAR THEIR OWN RISK OR TRANSFER IT TO AN INSURANCE CARRIER.

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(4) See Exhibit "D" - Sect. 11 "Fund for Expenses of Fire Marshal".

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(4) See Exhibit "D" - Sect. II "Fund for Expenses of Fire Marshal".

4. Conclusions.

A. No objection is taken to objectives of the Fire Marshal's Act or its administration in the Province of Ontario

except

B. that it is the considered view of the Association that the cost is inequitably placed on the provident citizen and to the extent that he is provident, to the end, that the benefits of the Act inure to the betterment of the improvident as well

and

C. It could be argued; that to the extent, that the Act achieves its purpose in the prevention of fire, it has served the improvident more than the provident; since, had a loss occurred, the improvident would have had to bear it in full, whereas the provident would only be faced with the possibility (not even the probability) of an increase in rate.

D. IT IS SUBMITTED FINALLY THAT THE FACT IS: INSURERS, AS INSURERS, MUST TAKE CONDITIONS AS THEY FIND THEM. THEY OFFER TO SERVICE AN INSURANCE FUND. IF, IN A COMMUNITY WHERE THE FIRE WASTE IS RELATIVELY HIGH, THE PREMIUM RATE OF NECESSITY WILL LIKEWISE BE RELATIVELY HIGH. ON THE OTHER HAND, IF THE FIRE WASTE IS LOW, COMPETITION ASSURES THE PUBLIC, THAT THE PREMIUM RATE WILL BE RELATIVELY LOW. AN INSURER'S FUNDAMENTAL INTEREST IN FIRE PREVENTION IS AKIN TO THE INTEREST OF THE MEDICAL PROFESSION IN CURTAILMENT OF THE SPREAD OF DISEASE. EACH IN HIS OWN FIELD IS ONLY TOO WELL AWARE OF THE ADVANTAGE TO THE COMMUNITY AND HIMSELF OF DELIMITING SUCH UNECONOMIC WASTE OF LIFE AND PROPERTY.

E. The Commission's attention is also directed specifically to ss. c. of Sect. 11 of the Act.

I. Since 1948 all insurers have been entitled under the Income Tax Act R.S.C. 1952, c.148, Sect. 74 to deduct policy dividends as expense in calculating income(5)

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(5) See Exhibit "E" - said Sect. 74.

4. E. Cont'd:

II. Sect. 11 discriminates against all insurers, other than mutuals and reciprocal exchanges, since, it is only these latter, that can deduct the "cash value of dividends paid or credited to policyholders".

III. It is to be noted however, that it is the view of this Association that the deduction of policy dividends is unsound in any case and this view has already been submitted to the Royal Commission on Taxation appointed by the Government of Canada under P.C. 1962 - 1334.

EXHIBIT "A"

THE ONTARIO COMMITTEE OF TAXATION

88 University Ave,,
Toronto 1, Ontario.

June 11, 1963

Mr. E.C. Duff, Manager,
Canadian Underwriters' Association
Ontario Branch,
44 Victoria Street,
Toronto 1, Ont.

Dear Sir:

The Ontario Committee on Taxation would be pleased to receive a written submission from the Canadian Underwriters' Association and in this connection has asked me to extend a specific invitation.

The Committee is charged with inquiring into and reporting upon the taxation and revenue system of the Province of Ontario and its municipalities and school boards. During the inquiry the Commissioners hope to benefit from the views of professional and business associations on tax and revenue matters which interest or affect their members.

Knowing the specialized knowledge and concern which your association has, the Committee feels certain that you could make a valuable contribution to the inquiry.

I am enclosing a copy of the first Information Memorandum which outlines the terms of reference and procedures of the Committee. A second Memorandum is being prepared to assist those making submissions and will be forwarded to you shortly.

If there are any questions which you have about the Committee, or in connection with any submission your association might make, the staff will be pleased to answer them and give any assistance possible.

I would appreciate hearing whether your association intends to make a submission and with which areas it would be likely to deal.

Yours very truly,

H.R. Hanson,
Secretary.

HRH:adf

EXHIBIT "B"

CANADIAN UNDERWRITERS' ASSOCIATION

MEMBERSHIP LIST

General Members

Acadia Insurance Co.
Agricultural Insurance Co.
Alliance Assurance Co. Ltd.
Alpina Insurance Co. Ltd.
American National Fire Ins. Co.
Atlas Assurance Co. Ltd.

Baloise Marine Insurance Co. Ltd.
Beaver Insurance Co.
Boston Insurance Co.
British America Assurance Co.
British Canadian Insurance Co.
British Empire Assurance Co.
British Law Insurance Co. Ltd.
British Oak Insurance Co. Ltd.
British Traders' Insurance Co. Ltd.

Caledonian Insurance Co.
Caledonian-Canadian Insurance Co.
Canada Accident and Fire Assurance Co.
Canada Security Assurance Co.
Canadian Equity Insurance Co.
Canadian Pioneer Insurance Co.
Canadian Surety Co.
Car & General Insurance Corp. Ltd.
Citadel Insurance Co. of Canada Ltd.
Commercial Union Assurance Co. Ltd.
Commonwealth Insurance Co.
Continental Insurance Co.

Employers' Liability Assurance Corp. Ltd.
Essex & Suffolk Insurance Co. Ltd.

Fidelity & Casualty Co. of New York
Fidelity Insurance Co. of Canada
Fidelity-Phenix Insurance Co.

General Security Insurance Co.
Glens Falls Insurance Co.
Globe Indemnity Co. of Canada
Granite State Insurance Co.
Great American Insurance Co.
Guardian Assurance Co. Ltd.
Guardian Insurance Co. of Canada
Guildhall Insurance Co. Ltd.

Hanover Insurance Co.
Hartford Accident & Indemnity Co.
Hartford Fire Insurance Co.
Hudson Bay Insurance Co.

Imperial Guarantee & Accident Insurance Co. of Canada
Imperial Insurance Office
Insurance Corporation of Ireland Ltd.

Law, Union & Rock Insurance Co. Ltd.
Legal & General Assurance Society Ltd.
Liverpool & London & Globe Ins. Co. Ltd.
Lombard Insurance Co. Ltd.
London Assurance
London-Canada Insurance Co.
London & County Insurance Co. Ltd.
London Guarantee & Accident Co. Ltd.
London & Lancashire Guarantee & Accident Co. of Canada
London & Lancashire Insurance Co. Ltd.
London & Scottish Assurance Corp. Ltd.

Maryland Casualty Co.
Merchants' Marine Insurance Co. Ltd.
Motor Union Insurance Co. Ltd.

National Union Fire Insurance Co.
New Hampshire Insurance Co.
New India Assurance Co. Ltd.
New York Underwriters Insurance Co.
New Zealand Insurance Co. Ltd.
Niagara Fire Insurance Co.
North British & Mercantile Ins. Co. Ltd.
North River Insurance Co.
Northern Assurance Co. Ltd.
Norwich Union Fire Insurance Soc. Ltd.

Occidental Fire Insurance Co.
Ocean Accident & Guarantee Corp. Ltd.

Old Colony Insurance Co.
Olympic Insurance Co.
Orion Insurance Co. Ltd.

Palatine Insurance Co. Ltd.
Patriotic Assurance Co. Ltd.
Pearl Assurance Co. Ltd.
Pearl Underwriters Agency of the
Pearl Assurance Co. Ltd.
Phoenix Assurance Co. Ltd.
Phoenix Insurance Co. of Hartford, Conn.
Planet Assurance Co. Ltd.
Prudential Assurance Co. Ltd.

Quebec Assurance Co.
Queensland Insurance Co. Ltd.

Railway Passengers Assurance Co.
Reliance Insurance Co. of Canada
Reliance Insurance Co. of Philadelphia
Reliance Marine Insurance Co. Ltd.
Rochester Underwriters Agency of the
Great American Insurance Co.
Royal Insurance Co. Ltd.
Royal Exchange Assurance
Royal Scottish Insurance Co. Ltd.

St. Lawrence Underwriters Agency of
the Western Assurance Co.
St. Paul Fire & Marine Insurance Co.
St. Paul Mercury Insurance Co.
Scottish Insurance Corp. Ltd.
Scottish Metropolitan Ass. Co. Ltd.
Scottish Union & National Ins. Co.
Sea Insurance Co. Ltd.
Societe Nationale d'Assurances
(National Insurance Society)
South British Insurance Co. Ltd.
Sun Insurance Office Ltd.

Tokio Marine & Fire Ins. Co. Ltd.
Travelers Indemnity Co.
Travelers Insurance Co.

Union Ass. Society Ltd. of London
Union Ins. Society of Canton Ltd.
United British Insurance Co. Ltd.
United Canada Insurance Co.
United States Fidelity & Guaranty Co.
United States Fire Insurance Co.

Washington General Ins. Corp.
Westchester Fire Insurance Co.
Western Assurance Co.
Westminster Fire Office
World Auxiliary Insurance Corp. Ltd.
World Marine & General Ins. Co. Ltd.

Yorkshire Insurance Co. Ltd.

EXHIBIT "C" FIRE MARSHALS ACT R.S.O. 1950 c.140 Section 3.

3. Powers and duties of Fire Marshal - Subject to the regulations and for the prevention and investigation of fire, it shall be the duty of the Fire Marshal* and he shall have power,

(a) Municipal by-laws - whenever he has reason to believe that the council of a municipality has not passed a by-law under the authority of any of the sections of The Municipal Act or any other Act relating to the prevention of fire or protection of life and property therefrom, or that the by-law which has been passed by a municipal council is not complete or is not being enforced, to confer with members or officers of the council and to assist them as far as may be expedient and practicable in preparing, improving and enforcing the by-law;

(aa) Assistance to municipalities - To assist members of municipal councils and municipal officers in the formation and organization of fire departments, to make recommendations with regard to equipment, operations, duties and administration of fire departments, and in the preparation of by-laws relevant thereto.

(b) Requiring assistance - to require the chief of the fire department of a municipality or any other person who may be designated as an assistant of the Fire Marshal to assist in the enforcement of the by-law;

(c) Propaganda as to fire prevention - to disseminate information and advice as to the prevention of fire by means of public meetings, newspaper articles, pamphlets, exhibitions and moving picture films and other wise as he may consider advisable;

(d) Assisting local organizations for fire prevention - to assist in the formation of local associations or leagues and to co-operate with any body or persons interested in developing and promoting the principles and practices of fire prevention and fire protection;

(dd) Assisting departments and agencies of government - to advise and assist departments and agencies of government in fire prevention and fire protection problems.

(e) Records of fires - to keep a record of every fire reported to him with such facts, statistics and circumstances as may be required by the regulations;

(f) Investigation of fires - to investigate the cause, origin and circumstances of any fire so reported to him and so far as it is possible determine whether it was the result of carelessness or design; R.S.O. 1937, c. 329, s.4, cls. (a-f).

* Underlining added.

(g) on the instructions of the Minister to investigate the cause, origin and circumstances of any explosion or of any conditions which in the opinion of the Minister might have caused fire, explosion, loss of life or damage to property and so far as possible determine whether the explosion was or conditions were the result of carelessness or design: 1941, c. 55, s. 12.
" Source - This clause was added in 1941 (c.55) to remove doubt as to the right of the Fire Marshal to investigate conditions which might have resulted in a fire, explosion, loss of life or damage to property had discovery of the conditions not been made."*

(h) Report to Crown attorney where offences suspected - to report to the Crown Attorney of the proper county or district the facts found upon the evidence in any case in which he has reason to suppose that loss by fire has been occasioned by criminal negligence or design or in which he deems an offence has been committed against this Act;

(i) Withholding payment of insurance money - whenever he may deem it advisable in the public interests to order the withholding of insurance money which may become payable by reason of any fire for a period not exceeding sixty days from the occurrence of fire pending an investigation of the cause and circumstances of the fire;

(j) Powers of Fire Marshal as to entry and inspection - to enter upon, examine and inspect from time to time hotels, apartment houses, factories, work shops and other places where persons reside or are employed in numbers, and direct such alterations to be made and such precautions to be taken as he may deem necessary for the purpose of complying with any statute or regulation made for the better protection of life and property in such buildings. R.S.O. 1937, c. 329, s. 4, cls. (g-i); 1960, c. 38, s.2.
"Source - This clause was added in 1930 (c.61) to remove doubt as to the power of the Fire Marshal to enter any premises in which a number of persons are working or living, with a view to the prevention of accidents by fire."*

* Comment of Canadian Insurance Law Service

FIRE MARSHALS ACT R.S.O. 1950 c.140 SECTION 11.

EXHIBIT "D"

11. - (1) Fund for expenses of Fire Marshal - Every person, syndicate, reciprocal exchange or corporation transacting the business of fire insurance within the meaning of The Insurance Act shall, in addition to the taxes and fees now required by law to be paid, pay to the Treasurer of Ontario on or before the 15th day of March in each year such sum as is determined by the Lieutenant-Governor in Council, not exceeding 1 per cent, calculated upon the gross premiums, fixed payments and assessments received during the preceding year in respect of fire insurance business* transacted in Ontario, excluding.

(a) premiums returned;
(b) premiums paid in respect of reinsurance ceded to insurance companies licensed to transact business in Ontario;
and
(c) the cash value of dividends paid or credited to policy-holders by mutual insurance companies and reciprocal exchanges,

as shown by the annual statement furnished to the Department of Insurance under The Insurance Act. 1942, c. 34, s. 14; 1957, c. 37, s. 1.

"Source - The above subsection was rewritten in 1942 to include reciprocal exchanges and to provide that the tax shall hereafter be paid on the basis of annual statements filed with the Department of Insurance and not on the basis of the corporation tax returns. It was re-enacted by 1957, c. 37, s.1, and is effective with respect to premiums, fixed payments and assessments received in respect of business transacted in Ontario during 1957 and later years."**

(2) Contribution by persons insured in unregistered companies - Every person sustaining or claiming to have sustained a loss by fire on property in Ontario insured in a company not licensed or registered under The Insurance Act shall pay to the Treasurer of Ontario an amount equal to one per cent upon the gross amount of loss claimed upon the unlicensed or unregistered company and the amount shall be due and payable not later than sixty days from the date of filing the claim upon the company or its representative whether the claim has or has not been paid at the expiration of such sixty days, provided that where the claim is sent by mail, the date of the mailing shall be taken for the purposes of this subsection to be that upon which the claim was filed.

(3) Application of fund - The total of such amounts shall constitute a special fund for the maintenance of the office of Fire Marshal, and the expense incident thereto, but any portion of the fund remaining unexpended at the end of any year and not required for maintenance shall be carried forward to the next fiscal year and the next assessment upon the fire insurance companies correspondingly reduced.

* Underlining added.
** Comment of Canadian Insurance Law Service.

(4) Preliminary assessment for expenses - The Treasurer of Ontario may make a preliminary assessment of the sum as provided in subsection 1 and such assessment shall be made upon the basis of the premiums, fixed payments and assessments received in respect of business transacted in Ontario during the last complete year for which annual statements have been filed in accordance with The Corporations Tax Act, 1957 and The Insurance Act and the amount of the assessment shall be subject to subsection 3. 1957, c. 37, s.1.

"Note - As re-enacted in 1957, the above section is effective with respect to premiums, fixed payments and assessments received in respect of business transacted in Ontario during 1957 and later years."*

(5) Penalty - Every person who contravenes the provisions of this section shall be guilty of an offense against this Act, and shall be liable to the penalty prescribed by section 16. R.S.O. 1937, c. 329, s. 12(2-5).

* Comment of Canadian Insurance Law Service.

EXHIBIT "E"

Refund of Premiums.

74. In computing the income for a taxation year of an insurance corporation other than a life insurance corporation, whether a mutual corporation or a joint stock company, there may be deducted every amount credited in respect of business for the year to a policyholder of the corporation by way of dividend, refund of premiums or refund of premium deposits if the amount was, during the year or within 12 months thereafter.

(a) paid to the policyholder,

(b) applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the corporation, or

(c) credited to the account of the policyholder on terms that he is entitled to payment thereof on or before expiry or termination of the policy. 1948, c. 52, s. 67.

20-10

THE ONTARIO COMMITTEE

ON

TAXATION

O.C. 557/63

SUPPLEMENTARY BRIEF

ON BEHALF OF

JOINT STOCK INSURANCE COMPANIES,

GENERAL MEMBERS OF THE

CANADIAN UNDERWRITERS' ASSOCIATION

(Reference—Original Brief dated August 30, 1963)

MONTREAL, NOVEMBER 12, 1963

A. LESLIE HAM, Q.C.
Counsel
Canadian Underwriters' Association

To: The Chairman and Members of
The Ontario Committee on Taxation.

1. This Supplementary Brief is filed to be read along with the Brief filed on behalf of the Canadian Underwriters' Association which bears the dated of August 30, 1963.

2. The reason for this filing is to draw to the attention of the Committee the stand taken by the Province of Quebec as recorded by an Order in Council of that Province.

A. Leslie Ham, Q.C.
Counsel for the
Canadian Underwriters'
Association.

Montreal,
November 15th, 1963

1. The Province of Quebec by "Order in Council" 1184(1) dated July 19, 1963, suspended the 1/4 of 1% Premium Tax on Fire Insurance imposed by Article 15 of Fire Prevention Act R.S.Q. 1941 Chap. 151 (2).

2. It happened that almost simultaneously both the Province of Ontario and of Quebec established, in the first case, a Committee on Taxation and in the second case, a "Royal Commission on Taxation" and each body requested that briefs be filed.

3. In each case the Canadian Underwriters' Association filed a brief in similar terms pointing out the inequity of imposing a tax on those in the community who insured against fire to defray or help defray the cost of the fire prevention work carried on by the Province for the benefit of all citizens. The argument in the case of Quebec was directed to said Article 15 and in the case of Ontario to Section 11 Fire Marshals Act R.S.O. 1950 c. 140 (2).

4. The attention of the Ontario Committee is directed to the action taken by the Province of Quebec, taken without requiring attendance at a hearing or oral argument, setting out as the basis for the decision that such an imposition was "unjust".

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(1) - Exhibit "A" - copy of said "Order in Council 1184"

(2) - Exhibit "B" - Article 15 of the Quebec Statute and the comparable Section 11 of the Ontario Statute.

EXHIBIT "A"

1. Order in Council (Quebec) 1184.

" ARRÊTÉ EN CONSEIL
CHAMBRE DU CONSEIL EXÉCUTIF

Numéro 1184 Québec, le 19 Juil. 1963

PRÉSENT:
Le lieutenant-gouverneur en conseil

CONCERNANT la suspension de la taxe sur les primes d'assurance en vertu de la Loi de la prévention des incendies

-----oooOooo-----

ATTENDU QU'en vertu de l'article 15 de la Loi de la prévention des incendies (Statuts refondus de Québec 1941, chapitre 151), une taxe annuelle d'un quart pour cent sur le montant des primes ou cotisations brutes d'assurance contre le feu perçues dans la province est payable par toutes les compagnies d'assurance, pour aider à défrayer les dépenses du service créé en vertu de ladite loi;

ATTENDU QUE par ailleurs une taxe de deux pour cent sur toute prime d'assurance est payable en vertu de la Loi de l'impôt sur les corporations;

ATTENDU QUE, vu cette dernière taxe, il n'est pas juste de continuer à percevoir la première.

IL EST ORDONNÉ en conséquence, sur la proposition du Ministre du revenu:-

QUE sous l'autorité de l'article 44 de la Loi du ministère du revenu (Statuts refondus de Québec 1941, chapitre 73), remise soit faite de la taxe imposée en vertu de l'article 15 de la Loi de la prévention des incendies à compter de la taxe payable le 1er juillet 1963 jusqu'à nouvel ordre.

Greffier Adjoint du Conseil Exécutif "

2. Translation thereof.

" ORDER IN COUNCIL
EXECUTIVE COUNCIL CHAMBER

No. 1184 Quebec, July 19, 1963

PRESENT:
The Lieutenant-Governor in Council

CONCERNING the tax suspension on insurance premiums, by virtue of the Fire Prevention Act.

-----oooOooo-----

WHEREAS by virtue of article 15 of the Fire Prevention Act (Revised statutes of Quebec 1941, chapter 151), an annual tax of one quarter per cent on the amount of premiums or gross assessment for fire insurance collected in the province is payable by every insurance Company, to help defray expenses for the service created by virtue of the said Act;

WHEREAS elsewhere a tax of two per cent on every insurance premium is payable by virtue of the Income Tax Law applying to corporations;

WHEREAS, in consideration of this latter tax, it is unjust to continue to collect the former tax.

IT IS THEREFORE PRESCRIBED, on order of the Minister of Revenue:-

THAT under the authority of article 44 of the Department of Revenue Act (Revised statutes of Quebec 1941, chapter 73), refund is to be made of the tax imposed by virtue of article 15 of the Fire Prevention Act commencing with the tax payable on July 1st 1963 until further notice.

Assistant Clerk of the Executive Council "

EXHIBIT "B"

1. Quebec.

Article 15 Fire Prevention Act R.S.Q. 1941, Chap. 151.

"Tax on insurance companies - To assist in defraying the expenses of the service created by this act, there shall be imposed on all fire insurance companies doing business in the Province, an annual tax of one-fourth of one per cent. on the aggregate amount of the gross premiums or assessments for fire insurance collected by each of such companies in the Province.

Payment - The said tax shall be payable to the Minister of Revenue of the Province before the first day of July each year, and shall be based on the annual report which each insurance company is bound to furnish in virtue of section 17 of the Corporation Tax Act (Chap. 77), or section 161 and 162 of the Insurance Act (Chap. 299), as the case may be.

Certificate - The certificate of the Minister of Revenue of the Province shall be final as to the amount to be paid by each company in virtue of this section. R.S. 1925, c. 180, s. 13; 2-3 Elizabeth II, c. 46, s. 1; 9-10 Elizabeth II, c. 68, s.4. "

2. Ontario.

Section 11 Fire Marshals Act R.S.O. 1950 c.140.

"(1) Fund for expenses of Fire Marshal - Every person, syndicate, reciprocal exchange or corporation transacting the business of fire insurance within the meaning of The Insurance Act shall, in addition to the taxes and fees now required by law to be paid, pay to the Treasurer of Ontario on or before the 15th day of March in each year such sum as is determined by the Lieutenant-Governor in Council, not exceeding 1 per cent, calculated upon the gross premiums, fixed payments and assessments received during the preceding year <u>in respect of fire insurance business</u>* transacted in Ontario, excluding,

(a) premiums returned;
(b) premiums paid in respect of reinsurance ceded to insurance companies licensed to transact business in Ontario;
and
(c) the cash value of dividends paid or credited to policy-holders by mutual insurance companies and reciprocal exchanges,

* Underlining added.

as shown by the annual statement furnished to the Department of Insurance under The Insurance Act. 1942, c. 34, s. 14; 1957, c. 37, s. 1.

"Source - The above subsection was rewritten in 1942 to include reciprocal exchanges and to provide that the tax shall hereafter be paid on the basis of annual statements filed with the Department of Insurance and not on the basis of the corporation tax returns. It was re-enacted by 1957, c. 37, s.1, and is effective with respect to premiums, fixed payments and assessments received in respect of business transacted in Ontario during 1957 and later years."**

(2) Contribution by persons insured in unregistered companies - Every person sustaining or claiming to have sustained a loss by fire on property in Ontario insured in a company not licensed or registered under The Insurance Act shall pay to the Treasurer of Ontario an amount equal to one per cent upon the gross amount of loss claimed upon the unlicensed or unregistered company and the amount shall be due and payable not later than sixty days from the date of filing the claim upon the company or its representative whether the claim has or has not been paid at the expiration of such sixty days, provided that where the claim is sent by mail, the date of the mailing shall be taken for the purpose of this sub-section to be that upon which the claim was filed.

(3) Application of fund - The total of such amounts shall constitute a special fund for the maintenance of the office of Fire Marshal, and the expense incident thereto, but any portion of the fund remaining unexpended at the end of any year and not required for maintenance shall be carried forward to the next fiscal year and the next assessment upon the fire insurance companies correspondingly reduced.

(4) Preliminary assessment for expenses - The Treasurer of Ontario may make a preliminary assessment of the sum as provided in subsection 1 and such assessment shall be made upon the basis of the premiums, fixed payments and assessments received in respect of business transacted in Ontario during the last complete year for which annual statements have been filed in accordance with The Corporations Tax Act, 1957 and The Insurance Act and the amount of the assessment shall be subject to subsection 3. 1957, c. 37, s.1.

"Note - As re-enacted in 1957, the above section is effective with respect to premiums, fixed payments and assessments received in respect of business transacted in Ontario during 1957 and later years."***

(5) Penalty - Every person who contravenes the provisions of this section shall be guilty of an offense against this Act, and shall be liable to the penalty prescribed by section 16. R.S.O. 1937, c. 329, s. 12(2-5). "

** Comment of Canadian Insurance Law Service.
*** Comment of Canadian Insurance Law Service.